

REMARKS

In The Claims:

Claims 1-5, 7-8, 10-11, and 13-19 have been examined

Claims 1-5, 7-8, 10-11, and 13-19 is/are pending in this application.

Claims 1-5, 7, 8, 10, 11 and 13-19 is/are rejected.

New claims 23-25 have been added.

Applicant asserts that the amended claims and the newly added claims are supported by the specification and contain no new subject matter. Furthermore, Applicant reserves the right to pursue in one or more future applications any of the subject matter canceled herein.

Rejection under 35 U.S.C. §103(a)

Claims 1-5, 7, 10-11, and 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 4,831,512 of Nakai et al. referred hereinafter "Nakai" in view of US Patent No. 5,544,077 of Hershey.

The rejection of the claims under 35 U.S.C. §103(a) as being unpatentable over Nakai in view of Hershey is hereby traversed and reconsideration thereof is respectfully requested in view of remarks set forth below.

Claim 1 as earlier amended includes the subject matter of originally filed claims 9 and 12. Claim 13 as earlier amended includes the subject matter of originally filed claims 20 and 21.

The pending office action finds the applicants' last submitted arguments unpersuasive as one cannot establish non-obviousness by attacking combined references individually. But that is not applicants' argument. The Office Action rests its grounds for rejection on the combination of Nakai with Hershey. The Office Action

admits that Nakai fails to disclose a stand-by processor domain, as recited in the claims. The Office Action takes the position that because Hershey does shows a stand-by processor ready for use during a hot swap, that the combination of the these two publications renders obvious the claimed invention.

Applicants disagree. The Nakai publication fails to discuss any type of stand-by processor, or any type of switching to an alternate processor. That leaves a pretty big gap between the Nakai publication and the claimed invention. For example, nothing in Nakai talks about a stand-by processor. Nothing in Nakai discusses or suggests using a generated statistical characteristic for a modified active message to interchange a stand-by processor with an active processor and nothing in Nakai discusses having a stand-by processor generate a modified stand-by message.

Hershey fails to bridge this gap.

Nothing in Hershey discusses or suggests using a generated statistical characteristic for a modified active message to interchange a stand-by processor with an active processor. Nothing in Nakai teaches this either. The Office Action asserts that because Nakai teaches finding an error and using that error to set a flag, one of ordinary skill in the art would know to extend Nakai to have or use a stand-by processor. But not just any stand-by processor, but one that runs the exact same type of message modification process as used by the active processor; one that allows the different processes to set a characteristic that indicates whether a process is working correctly. This assertion is made because Hershey describes using a stand-by processor that executes the same process as the primary. This is an assertion that goes too far and although most rejections of claims involve some hindsight reconstruction of the applicant's invention, this rejection extends the teaching of these two references to a point where it becomes an impermissible hindsight reconstruction. In truth, there is nothing in either of the publications that would impel one of skill in the art to make the proposed combination. Nakai teaches setting an error flag – and ends its discussion there. The extension of Hershey to say that is teaches or can represent a stand-by

processor as claimed is clever, but improper - the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). The extension of Hershey and its combination with Nakai is clearly based on applicant's disclosure.

Withdrawal of the rejection of claims 1 and 13 under 35 U.S.C. §103(a) as being unpatentable over Nakai in view of Hershey or Baker is therefore respectfully requested.

Dependent Claims 2-5, 7-8, 10-11, and 14-19 Are Patentable Over the Cited References. Moreover, new claims 23-25 recite features of applicants' invention that are not found in the references cited. Allowance of these claims is similarly requested.

CONCLUSION

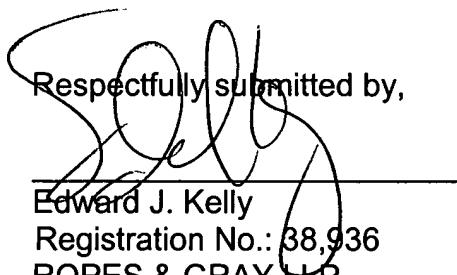
In view of the above remarks, Applicant submits that claims 1-5, 7-8, 10-11, and 13-19 and 23-35 are in condition for allowance, and requests that the Examiner pass this application to allowance.

If the Examiner believes that a telephone conversation with Applicant's attorney would expedite allowance of this application, the Examiner is invited to call the undersigned.

We believe that we have appropriately provided for fees due in connection with this submission. However, if a fee is due, please charge our Deposit Account No. 18-1945, under Order No. CDPC-P01-004 from which the undersigned is authorized to draw.

Dated: November 7, 2005

Respectfully submitted by,


Edward J. Kelly
Registration No.: 38,936
ROPES & GRAY LLP
One International Place
Boston, Massachusetts 02110-2624
(617) 951-7681
(617) 951-7050 (Fax)
Attorney/Agent for Applicant